By What Authority?

For Those Concerned with Indigenous Sovereignty

A Reading for Those Who Want to Understand the Documentary Root of the Colonial Claim

By What Authority? — For Those Concerned with Indigenous Sovereignty
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The weight of a claim you did not agree to

Every native title application begins the same way. You must prove your connection. You must demonstrate continuity of law and custom. You must satisfy criteria set by a system that already decided what counts as proof. The land was yours before the state existed. But the state adjudicates the claim.

This is not an accident of history. It is the structure the legal system was designed to produce. And that design has documents at its foundation — documents that can be read, that are still cited in constitutional law, and that have a specific chain of authority that has never been examined at depth in the courts that daily apply its logic.

This series examined that chain. Its finding is not a legal conclusion about present validity, but an evidentiary challenge to provenance: the authority claimed at the foundation appears constructed rather than demonstrated, including at the theological level that licensed the rest.

Understanding what was constructed, how, and why does not by itself change the law. But it changes what the negotiating table actually looks like. On the argument advanced here, the colonial claim has not been examined at its deepest source. You are negotiating with a legal architecture whose foundational warrant may be defective, and whose theological basis has not been tested with ordinary evidentiary scrutiny. That distinction matters for how the conversation should be framed, and for what kind of outcome is honestly possible.

The instruments: what they actually say

The Doctrine of Discovery rests on two foundational documents.

Romanus Pontifex (Nicholas V, 8 January 1455) was addressed to King Alfonso V of Portugal. The operative language of the grant: "We… grant to the aforesaid King Alfonso the full and free faculty… to invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed, and the kingdoms, dukedoms, principalities, dominions, possessions, and all movable and immovable goods whatsoever held and possessed by them and to reduce their persons to perpetual slavery, and to apply and appropriate to himself and his successors the kingdoms, dukedoms, counties, principalities, dominions, possessions, and goods."

This is the document. Not a summary. Not an interpretation. The grant was made by the head of the Roman Catholic Church, in the name of God, on the authority of the Holy See.

Inter Caetera (Alexander VI, 4 May 1493) extended comparable authority to Spain. Its operative language: "We… do… give, grant, and assign to you and your heirs and successors, kings of Castille and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered." The grant was made "in the name of the Holy Apostolic See," on the authority of "Almighty God conferred upon us in blessed Peter."

These documents became the foundational authority for *Johnson v. M'Intosh* (1823), in which Chief Justice Marshall incorporated the Doctrine of Discovery into American common law. That decision holds, in the United States, today. In Australia, the same doctrine operated through the royal

prerogative; *Mabo v. Queensland (No. 2)* (1992) recognised native title but explicitly affirmed Crown sovereignty and declined to examine the foundational question of how that sovereignty was acquired.

What the instruments required

The documents needed a category — a reason why the peoples of Africa, Asia, and the Americas did not hold sovereignty the Crown was bound to recognise. The category they built was theological: non-Christians, outside the community of the faithful, did not hold title in a form the law of Christian nations was required to acknowledge.

This was not a peripheral legal technicality. It was the load-bearing premise. Remove it, and the theological warrant for discovery sovereignty is no longer secure. You cannot grant what you do not have. The Crown could only receive the grant because the pope had authority to make it. The pope only had authority over the territories because their peoples were outside the circle of rights-holders. The peoples were outside that circle because of their religious status.

The category was not accidental. It was necessary. And it required a specific theological foundation: that the Bishop of Rome held legitimate temporal authority over non-Christian peoples, sufficient to grant sovereignty over them to Christian crowns.

That authority came from specific texts.

Laudabiliter: the mechanism was tested first in Ireland

Before the voyages of discovery, before the bulls addressed to Portugal and Spain, the mechanism was tested on Christian Europe itself.

Laudabiliter is a papal bull attributed to Pope Adrian IV, dating to approximately 1155. It granted Henry II of England the right to invade Ireland, reform its church, and assert lordship over its people. The language: Adrian grants "that you may enter that island, and carry out there what tends to the honour of God and the salvation of souls, and that the people of that land may receive you honourably, and as their lord revere you."

Ireland was already Christian. Its people were within the church's communion. The grant was made anyway. This establishes that the mechanism was not about paganism. It was not about bringing the faith to those who did not have it. It was about the church's claim to arbitrate temporal power — the claim that the Bishop of Rome could dispose of sovereignty over peoples, whether Christian or not, on the basis of his position as Peter's successor.

When Romanus Pontifex and Inter Caetera extended the mechanism to Africa, Asia, and the Americas, they were applying a tested instrument to a new context. The foundational legal logic had already been exercised within Christendom for three centuries. The papal bulls did not invent a new power. They exercised an established one in a new geography.

Where the church's authority came from

The papal bulls do not claim a novel authority. They claim the authority the medieval church genuinely believed it held — the authority descending from Peter, to whom Jesus had given "the keys of the kingdom of heaven" and the power to bind and loose on earth and in heaven.

This is the Petrine commission, at Matthew 16:18–19: "on this rock I will build my church, and the gates of Hades will not prevail against it. I will give you the keys of the kingdom of heaven; whatever you bind on earth will be bound in heaven."

This passage is absent from the parallel pericopes in Mark and Luke. It uses vocabulary characteristic of second-century church-organisational writing. The patristic writers of the first two centuries do not cite it in contexts where it would be decisive. Volume 3 examines its provenance in detail.

The Pauline layer is equally load-bearing. The theological warrant for submission to governing authority — the claim that rulers are instituted by God and must be obeyed — comes from Romans 13:1–7: "Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God."

This passage supplied Christian political theology with its scriptural basis for divinely ordained authority from the second century onward. It underpins the doctrine that the church can sanction and withhold temporal power. It is the Pauline layer in the logic that makes the papal bulls possible: God institutes governing authority, the church mediates that institution, faithful Christian crowns act with divine sanction when the church grants them authority over discovered territories.

The problem with the warrant

Romans 13:1–7 is one of the passages the series identifies as a later addition to Paul's authentic letters, on grounds that are specific and convergent.

The structural evidence: the passage interrupts a sustained argument about love that runs continuously on both sides. Romans 12 ends with instructions about loving enemies and not taking revenge. Romans 13:8 continues: "Let no debt remain outstanding, except the continuing debt to love one another." The governing-authorities passage sits between these sections with no internal transition. Remove it; the argument is continuous.

The historical evidence: Marcion's canon, assembled before the proto-orthodox one, did not include this passage. The passage appears first as a citation in Irenaeus, arguing against Marcion while defending Roman imperial authority — the precise context in which a passage commanding submission to governing authority would be most useful to the institution.

New Testament scholar Jason BeDuhn's reconstruction of Marcion's text (*The First New Testament*, 2013) found no evidence that Marcion removed this passage for ideological reasons. It was simply not in the text he knew. The five core evidence tests the series uses in summary — structural interruption, writing-style divergence, patristic silence, institutional usefulness, and theological direction — all converge on this passage as a later addition; Companion A records the same evidence through the fuller twelve-code apparatus.

What the naming cost

The theological logic of the instruments required not only that indigenous peoples be placed outside the circle of rights-holders. It required a language for that exclusion. The language was provided by the tradition itself: pagan, infidel, savage, heathen. These were not merely insults. They were technical categories. They marked who was inside and who was outside the universe of people the law was designed to protect.

That language shaped not only the legal instruments but the self-understanding of the project. Colonisation was not merely extraction. It was also conversion — the importation of the categories and claims of the tradition that had manufactured the foundational warrant. The missionaries arrived with the same tradition that had issued the bulls. The legal apparatus and the cultural apparatus were parts of the same project.

This is why the series matters at a register that goes beyond legal argument. The manufactured warrant did not only dispossess people of land. It supplied the conceptual vocabulary that classified Indigenous peoples as not-yet-arrived-at-fully-human status within the framework the colonists used to think. The tradition that claimed to authorise the dispossession also claimed to define what full humanity required. That vocabulary was woven into law, into education, into the administrative categories that still frame how Indigenous peoples are counted, governed, and understood.

A manufactured warrant does not produce a manufactured harm. The harm is real, ongoing, and present. What the manufactured warrant produced was a moral framework that classified the harm as legitimate — as part of a legitimate, divinely authorised project of bringing order to places that had not yet received it. Understanding that the framework was manufactured changes what the harm was. It was not merely the unfortunate consequence of a legitimate project. On this analysis, it was the design outcome of a project whose warrant was defective at its root.

What Paul's authentic letters actually claimed

The contrast with Paul's authenticated letters is direct and worth understanding on its own terms.

Galatians, which required minimal reconstruction and is treated by scholarship as the most reliably preserved of Paul's letters, contains Paul defending the idea that the social categories Roman civilisation used to organise people do not constitute the community he is building:

> *There is neither Jew nor Greek, neither slave nor free, neither male nor female, for you are all one in Christ Jesus.* (Galatians 3:28)

Paul is not offering an aspiration about equality in some future spiritual realm while material inequality persists. He is arguing a specific point against specific people who are pressuring his communities to add conditions — ritual markers, ethnic belonging, legal status — to membership. His argument is that you cannot attach conditions to something unconditional without destroying the thing itself.

Philemon is the most concrete single example of what this meant in practice. Paul writes to a slave owner on behalf of a runaway slave, without legal right, without invoking scriptural authority:

> *Perhaps the reason he was separated from you for a while was that you might have him back forever — no longer as a slave, but better than a slave, as a dear brother.* (Philemon 1:15–16)

Not: release him because the law requires it. Not: release him to earn righteousness. But: the category of slave no longer defines what he is to you.

This is not the voice of someone who believed the social categories governing bodies used to sort people were divinely sanctioned. The passages that reversed that position — which classified different peoples differently, which

told them to submit to governing authority, which ordered them to remain in their assigned stations — were not extensions of his argument. They were its reversal, inserted by people who needed the tradition to produce politically safe subjects and socially stable hierarchies.

The oath architecture and what seals the foundation

Volume 3 identifies what it calls the oath architecture — the layered system of sworn obligations that binds institutional actors to the sovereignty chain at each level.

The sovereign's authority rests on the chain of instruments. Constitutional instruments incorporate that authority into domestic law. Judicial officers swear to uphold the constitution. Officers of the court are admitted under obligations to a court of the sovereign. Public servants, military personnel, and naturalising citizens swear oaths to the Crown.

Each oath is genuine. The person swearing it is making a real commitment. But each oath also binds the person to an authority whose foundational claim has never been examined at depth. The weight of obligations built on top of the foundation effectively seals the foundation from scrutiny.

This matters for anyone engaged with native title, treaty, or sovereignty questions because it explains why the constitutional foundation has proven so resistant to examination from within. No individual judge, politician, or bureaucrat is in a position to challenge a foundational defect in the authority they have sworn to serve. The mechanism for challenging the foundation — courts of the sovereign — requires the challenger to stand inside the authority structure and ask it to examine its own foundation. The structure has no institutional incentive to do so.

The Vatican repudiation and what it does not undo

In 2023, the Vatican issued a joint statement by the Dicasteries for Culture and Education and for Promoting Integral Human Development, formally repudiating the Doctrine of Discovery. The statement declared that the Doctrine "was not part of the Catholic faith" and "can never be used as a justification for unjust treatment of indigenous peoples."

This is not a small concession. The institution that issued the foundational instruments has now acknowledged that those instruments should not have been issued, that the authority claimed in them was not legitimate, and that the consequences represent an injustice.

But the repudiation does not change constitutional law. The institutions are incorporated into the domestic law of settler colonies through case law and statutory provisions that have their own constitutional force. The theological fig leaf has been removed. The church no longer claims the authority it used to issue the bulls. The bulls remain in the case law.

This combination — the theological foundation abandoned by the institution that provided it, the legal consequences intact — is a particular kind of injustice. The justification for what was taken has been withdrawn. The taking remains. The institution that licensed the dispossession now says it should not have. The constitutional orders built on that license say the question is not open for review.

For anyone negotiating treaty, or pursuing native title, or pressing a sovereignty claim, this is the current position. The moral argument was conceded by the institution that made the foundational claim. The legal argument has not moved. The series provides the evidentiary basis — the full chain, traced link by link — for understanding exactly what was conceded, exactly what has not moved, and exactly why.

What examining the foundation reveals for the negotiating table

When the full chain is followed — from the current constitutional order back through the case law, back through the papal bulls, back through the medieval church's claim to temporal authority, back through the Pauline warrant — the series argues that the foundation does not rest on a clearly legitimate grant, but on a constructed warrant assembled through theological, ecclesiastical, and legal assumptions that were never fully examined.

The Pauline warrant is, on this series' argument, textually compromised: key passages were inserted into the New Testament by an institution with a specific interest in justifying political submission. The passage that says "all authority comes from God" was probably not written by Paul.

The ecclesiastical instruments depended on that compromised warrant: the papal bulls claimed authority assembled from those texts, attributed to a Petrine commission that also shows signs of late insertion, and built into a structure of institutional claims that served the interests of those making them.

The legal instruments incorporated that authority without examining its theological foundation. Courts that cite the Doctrine of Discovery are citing a doctrine whose foundational warrant has not been examined as a primary source document.

A structure built on an unexamined or defective warrant is not the same as one built on demonstrated authority, even if both look identical from outside. The difference matters for the negotiating table. A party negotiating from sovereign authority whose foundations have not been tested is negotiating from a position whose legitimacy is open to examination. The series performs that examination and produces the full evidentiary record.

Where to go from here

Volume 3 — The Chain from Scripture to Sovereignty is the most directly relevant volume. It traces each link in the chain from the Pauline text through the patristic literature, through the medieval papacy, through Laudabiliter, through Romanus Pontifex and Inter Caetera, through *Johnson v. M'Intosh*, through Australian constitutional law. Each document is examined as a primary source, with citations.

Volume 1 gives the argument in brief. *Volume 2* sets out the full textual evidence for the Pauline interpolations — the methodology, the manuscript record, and the verse-level adjudication.

Appendix H of Volume 3 lists the principal contested claims and the strongest counter-arguments. The series is explicit about the limits of the evidence. The argument does not require overstating. It requires only following the chain, document by document, and reading what each document actually says.

The chain can be followed. The documents are quoted in full. The grounds for each finding are stated and checkable. What is at the foundation of the authority that has governed every land claim, every native title proceeding, and every sovereignty negotiation on this continent can be examined. It should be.

A note on access

This document, the full volumes, the dataset, and the analysis tools are all free. There is no paywall. No credentials are required to access them.

That is not incidental. The institutional tradition this series examines secured its authority in part by controlling who could read the texts and what they were supposed to mean — Latin only, authorised interpreters, laypeople formally excluded from direct reading. The peoples whose land was granted away under that tradition were among those most comprehensively excluded from the apparatus for examining it.

This series does the opposite. The methodology is documented. The evidence is public. The tools to verify or challenge every finding are already in your hands — before you have agreed to anything, before you have qualified for anything, before any institution has decided whether you should have access.

The chain can be examined. This is what that examination looks like when it is offered without a gate.

This document summarises the legal-historical and textual argument developed in Volumes 1–3 of the By What Authority series. Scholarly citations, methodology, and full evidence are in those volumes.